



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
HARRY LEAR, JR. )

For Appellant: Harry Lear, Jr.,  
in pro. per.

For Respondent: Daniel A. Borzoni  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Harry Lear, Jr., against proposed assessments of additional personal income tax and penalty in the total amounts of \$526.50 and \$648.00 for the years 1976 and 1977, respectively.

Appeal of Harry Lear, Jr.

The sole issue presented by this appeal is whether appellant has shown respondent's determinations to be incorrect.

Respondent received information from the Employment Development Department that appellant had received wages from his employer, Stauffer Chemical, during 1976 and 1977 and determined that he was required to file personal income tax returns for those years. Finding no record of such returns, respondent demanded that they be filed. In response, appellant stated that he was not required to file because he was a member of a religious order under a vow of poverty.

Respondent issued proposed assessments for 1976 and 1977, including for each year penalties for failure to file a return (Rev. & Tax. Code, § 18681) and failure to file a return after notice and demand (Rev. & Tax. Code, § 18683). Appellant protested, the assessments were affirmed, and this timely appeal followed.

Appellant contends that his income is exempt from taxation because his activities at Stauffer Chemical were religious. He bases his claim of exemption on the United States and California Constitutions and on Internal Revenue Code section 3401(a)(9).

It is well settled that appellant bears the burden of proving respondent's determinations incorrect, both as to tax and penalties of the type imposed here. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Appellant has not even attempted to do so. He relies instead on constitutional arguments on which we have consistently declined to rule in deficiency assessment cases (Appeal of Richard L. Starnes, Cal. St. Bd. of Equal., Jan. 6, 1981; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977), and which have been found by the United States Tax Court to be entirely without merit. (William C. White, ¶ 81,147 P-H Memo. T.C. (1981).) His other arguments are substantially the same as those which we rejected in the Appeal of Jack V. and Allene J. Offord, decided June 23, 1981, and we find that they should be rejected in this appeal as well.

Respondent's action, therefore, is sustained.

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ORDER\_\_\_\_\_

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Harry Lear, Jr., against proposed assessments of additional personal income tax and penalty in the total amounts of \$526.50 and \$648.00 for the years 1976 and 1977, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

William M. Bennett, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins - I I - - ~ - - Y - -, Member

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